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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,527	12/21/2000	John P. Blasko	T721-14	6850

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TECHNOLOGY, PATENTS AND LICENSING, INC./PRIME
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EXAMINER

RETTA, YEHDEGA

ART UNIT	PAPER NUMBER
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3622

MAIL DATE	DELIVERY MODE
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08/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/742,527	Applicant(s) BLASKO ET AL.	
	Examiner Yehdega Retta	Art Unit 3622	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 26 July 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).


4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: 1-21 and 85-113.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____


 Yehdega Retta
 Primary Examiner
 Art Unit: 3622

Art Unit: 3622

Applicant argues that the examiner mistakenly equate the avails recited in the claim with the “advertisement spots or an actual advertisement itself described in Hendricks. Applicant asserts that the “avail” as described in the present application and recited in the present claims would be readily understood to be a program break or space into which advertisements or spots are placed. Examiner would like to point out that even though the term advertisement spot is used to address applicant’s argument, however under the “102” rejection examiner indicated the following:

“Regarding claims 1, 85-87, Hendricks teaches correlating available addressable units of a communication network with avails (advertising opportunities or slots) (see fig. 4, col. 4 line 54 to col. 5 lines 51). Hendricks teaches purchase of an avail on results of correlation (see col. 36 line 57 to col. 37 line 12). Hendricks teaches selecting a set of advertisements used in the chosen grouping by the advertisers and the frequency of display based on number of requests and cost paid by the respective advertisers to have the commercial displayed (see col. 71 lines 3-49).”

Therefore, examiner clearly understands that avail according to applicant also means advertisement opportunity or slots or breaks or pods. Examiner would also like to point out to applicants that applicant’s specification discloses (see par. [0005]) “Television service providers (e.g., broadcast TV networks, cable TV networks) **allocate a limited number of advertisement spots (or "avails" hereinafter)** for each television channel or program within a certain time duration. These avails or the time slots in the channels (i.e., day part and channel) corresponding to these avails are sold to advertisers who want to advertise their products and/or services”.

Applicant also equates “avails” to “advertisement spots”.

Applicant also asserts that Hendricks teaches advertisement or “spots” selected to be placed in “program breaks” or “pots”. Since applicant indicates that the “avail” according to the claim is

Art Unit: 3622

also a program break or space, Examiner's understanding is that applicant is not arguing that Hendricks does not teach program breaks or space.

Applicant also states that he fails to understand how the Examiner draws the conclusion that Hendricks teaches, "correlating the received segment with the stored addressable unit data and automatically identifying the available (advertisement spots)". Applicant asserts that although Hendricks does teach selecting advertisement for display at television terminals no connection is made between television terminals and avails. Examiner strongly disagrees. Hendricks teaches individual set top terminal address information is collected and provided to the operations center, to associate with that identifier necessary information to aid in the targeting process. Hendricks also teaches other information may be collected from other sources (addressable unit data comprising information concerning characteristics of individuals associated with the addressable units). Hendricks teaches for a number of target criteria, individual groups are defined each target criteria then segmented into appropriate groups (market segments) (see col. 26 line 42 to col. 27 line 38 col. 42 line 65 to col. 43 lines 5, col. 48 line 23-31). Hendricks teaches in addition to accounting for the occurrence and alignment of program breaks with the programs, and the number of feeder channels available, the break management engine must also account for the number and type of available targeted advertisements for display and the variety of subscribers (according to group assignment numbers) who will potentially view the program and an advertiser will provide this information when forwarding the advertisements to the operation center i.e., receiving segment characteristics of a market segments from a user and correlating (associating, mapping, matching, corresponding, etc) the received segment with the stored addressable unit data (subscribers) and automatically identifying the available addressable units

Art Unit: 3622

(set top terminals of the subscriber with the target criteria) to be correlated with the avail (program breaks or pods).

Applicant also argues that although Hendricks may charge different rates to different advertisers, such rates even if determined before the scheduling occurs are not for specific avails corresponding to particular addressable units. Examiner would like to point out that generating a proposed price for purchase of at least one avail based on results of the correlating step does not equate to specific avails corresponding to particular addressable units. According to the claim the price generated could be for all the subscribers and for any or all available avails (for any or all program breaks or pods).

Regarding claims 85, 86 and 113, applicant argues that the Examiner failed to address a user selecting an avail for purchase. Examiner respectively disagrees. Examiner indicated that Hendricks teaches, “(b)asically this subroutine selects a set of commercial that will be used in the chosen groupings, function block 444. This selection process typically involves advertisement from various advertisement categories (from a number of advertiser which have purchased “air time”). Each advertisement will subsequently be assigned a number of times that it will be shown in a given time frame, block 446. This frequency of display may be based on various factors, including the number of requests and cost paid by the respective advertisers to have the commercial displayed (see col. 71 lines 11-29). Hendricks also teaches (see col. 30 line 65 to col. 31 line 6) in addition to accounting for the occurrence and alignment of program breaks with the programs, and the number of feeder channels available, the break management engine must also account for the number and type of available targeted advertisements for display and the variety of subscribers (according to group assignment numbers) who will potentially view the program

Art Unit: 3622

and an advertiser will provide this information when forwarding the advertisements to the operation center. That means the user (advertiser) is allowed to purchase a subset of the avails that result from the correlating, wherein the subset of the avails the user is allowed to purchase has not yet been purchased.

Regarding claim 10, Applicant also argues that nowhere in Hendricks is a user enabled to select a subset of the avails. Examiner disagrees. Hendricks teaches for a number of target criteria, individual groups are defined each target criteria then segmented into appropriate groups (market segments) (see col. 26 line 42 to col. 27 line 38 col. 42 line 65 to col. 43 lines 5, col. 48 line 23-31). Hendricks teaches in addition to accounting for the occurrence and alignment of program breaks with the programs, and the number of feeder channels available, the break management engine must also account for the number and type of available targeted advertisements for display and the variety of subscribers (according to group assignment numbers) who will potentially view the program and an advertiser will provide this information when forwarding the advertisements to the operation center. Therefore, by selecting the market segment (potential viewer of the program) the advertiser of Hendricks selects program breaks associated with the potential viewer, which is a subset of all the program breaks or pods or advertisement opportunities.

Regarding claim 88, the claim does not recite entering a market segment selection, as argued by applicant. The claim recites receiving a market segment selection however does not indicate how the user provides the information.

Claim 105 recites (a) receiving a correlation selection from a user, wherein said correlation selection indicates the preference of said user to be presented with avails that

Art Unit: 3622

correspond to said correlation selection. The term "correlation selection" is so broad that could mean so many things. But applicant limits the feature to mean, receiving indication of the preference of a user (advertiser) to be presented with avails (advertisement opportunities; program breaks or pods where advertisement can be displayed), and this feature as indicated before is disclosed in Hendricks. Regarding claim 106, the claim recites, "wherein a user may actuate the purchase of at least one avail". Applicant asserts that there is no mechanism in Hendricks for affirmatively purchasing an avail. Examiner disagrees. As indicated above Hendricks teaches the frequency of display may be based on various factors, including the number of requests and cost paid by the respective advertisers to have the commercial displayed (see col. 71 lines 11-29), which indicates that the advertiser may act to purchase of an avail.

